IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 989 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
DAHYABHAI JETHABHAI - Respondent(s)

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Appearance :
Ms. Manisha Lavkumar, Assistant Government Pleader for Petitioner(s).
Shri A.K. Clerk for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/08/2007

ORAL JUDGMENT

The State, being aggrieved by the award dated 25th May, 1998 passed by the learned Presiding Officer, Labour Court, Rajkot in

Reference (LCR) No.1471 of 1988, is before this Court under Article 227 of the Constitution of India with a submission that the respondent-workman having failed in proving that he had worked for 240 days in twelve calendar months preceding the date of his removal or termination, the learned Labour Court could not answer the reference in favour of the workman. It was also submitted that the petitioner did not terminate the services of the respondent, but, the respondent of his own stopped coming to the work place.

2. Shri A.K. Clerk, learned Counsel for the respondent-workman, on the other hand, submitted that to prove the fact that the workman had worked for 240 or more days in twelve calendar months preceding the date of retrenchment/termination, the records were summoned from the possession of the present petitioner, but, for the reasons best known to the present petitioner, it did not produce the records. He also submitted that whether the respondent was orally terminated or he of his own had stopped coming to the work place, was a question of fact and if a finding of fact is recorded by the learned Labour Court after appreciating the oral evidence, then, under Article 227 of the Constitution of India, this Court may not interfere.

3. Undisputedly, the respondent-workman required the petitioner-employer to produce the records for proving the fact that he

had worked for 240 or more days. The employer/petitioner without any justifiable reason refused to produce the records. If such records are not produced by the person, who is required to maintain such records, then, beyond summoning the records, the workman would not be able to do anything. In such a case, the Court would be entitled to draw necessary inference against the party, who was in possession of the records but was not producing the same. The learned Court below, under the circumstances, was justified in holding that the workman was in continuous service.

4. So far as the fact that the services of the respondent were orally terminated or he left of his own, is concerned, the finding has been recorded by the learned Labour Court after appreciating the oral evidence. Unless the finding is shown to be perverse, the High Court, in its jurisdiction under Article 227 of the Constitution of India, would not interfere.

5. I find no reason to interfere. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**